

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPEALALTE SIDE

WRIT PETITION NO.2310 OF 2004

Dnyaneshwar Dakorji Kolpek. Petitioner.

Vs.

Vithal Dakorji Kolpek & Ors. ...Respondents.

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Mr.M.N.Dhamal for the Petitioner.

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CORAM : DR.D.Y.CHANDRACHUD, J.

July 11, 2006.

P.C. :

The Learned Trial Judge in the Court of Small Causes has allowed an application for impleadment of the Third Respondent as a party to the declaratory suit instituted by the Petitioner. The contention of the Third Respondent is that the mother of the Petitioner and the First Respondent who was the original Defendant has surrendered the tenancy to the landlord after which the tenancy came to be transferred in the name of the Third Respondent. On this averment, it cannot be said

that the Third Respondent is neither a necessary nor a proper party to the proceeding. The Petitioner is contesting the claim of the Third Respondent but that is a matter to be adjudicated upon, on the evidence produced at the trial. At this stage, the order of the Trial Court, confirmed in revision, which allowed the impleadment of the Third Respondent, does not call for interference under Article 227 of the Constitution. However, it is clarified that all the rights and contentions on the merits of the respective parties are kept open to be decided at the trial of the suit. The Petition is accordingly disposed of.

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